



4. Country Stores is an Iowa corporation, and owns and operates the Le Mars Country Store in Le Mars, Iowa.

## **JURISDICTION**

### **Authority to Regulate USTs**

5. Regulation of USTs containing regulated substances, including petroleum products, is within the jurisdiction of the DNR and the Environmental Protection Commission ("EPC"). Iowa Code §§ 455B.471-479.

6. The EPC is authorized to adopt rules related to USTs including, but not limited to, release detection and prevention, monitoring, site assessment, risk classification, tank closure, reporting, corrective action, and financial responsibility applicable to all owners and operators of USTs. Iowa Code § 455B.474. The UST rules adopted by the EPC are contained in 567 Iowa Admin. Code chapters 135 and 136.

7. An "owner" of a UST is a person who owns the UST used for the storage, use, or dispensing of petroleum products. Iowa Code § 455B.471(6)(a)(1); 567 Iowa Admin. Code 135.2.

8. An "operator" of a UST is a person in control of, or having responsibility for, the daily operation of the UST. Iowa Code § 455B.471(5); 567 Iowa Admin. Code 135.2.

### **Prevention and Detection of Leaks From USTs**

9. Owners and operators must provide a method, or combination of methods, of release detection that is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition. 567 Iowa Admin. Code 135.5(1)"a"(1)-(2).

10. When owners and operators use an automatic tank gauge to detect petroleum releases, the gauge must be able to detect a 0.2 gallon-per-hour leak rate from any portion of the tank that routinely contains product. 567 Iowa Admin. Code 135.5(4)"d"(1).

11. Owners and operators of petroleum UST systems must monitor the USTs at least every 30 days using a DNR-approved method such as automatic tank gauging, or use monthly product inventory control methods and tank tightness testing, for detection of petroleum releases. 567 Iowa Admin. Code 135.5(2)"a".

12. Owners and operators of petroleum UST systems must monitor pressurized underground UST piping that routinely contains regulated substances with an automatic line leak detector, and conduct an annual line tightness test or a DNR-approved method of monthly monitoring that is designed to detect a release from any portion of the underground piping. 567 Iowa Admin. Code 135.5(2)"b"(1)"1" and "2", 135.5(5)"b", 135.5(5)"c".

#### **Maintenance and Availability of UST Compliance Records**

13. All UST system owners and operators must maintain records demonstrating (1) all written manufacturer or installer performance claims pertaining to any release detection system used, (2) the results of any UST sampling, testing, or monitoring; and (3) written documentation of all calibration, maintenance, and repair of release detection equipment. 567 Iowa Admin. Code 135.5(6)"a"-"c".

14. Owners and operators must maintain records that include documentation of compliance with release detection requirements. 567 Iowa Admin. Code 135.4(5)"b"(4).

15. Owners and operators must maintain records at the UST site, or at a readily available alternative site, and make the records available to the DNR for inspection upon request. 567 Iowa Admin. Code 135.4(5)"c"(1) and (2).

**Authority to Enforce Violations of UST Statutes and Regulations**

16. A person who violates a provision of Iowa Code chapter 455B, Division IV, part 8, or rule or order issued thereunder is subject to a civil penalty not to exceed five thousand dollars (\$5,000.00) for each day during which the violation continues. Iowa Code § 455B.477(1).

17. The Attorney General, at the request of the DNR director with approval of the EPC, shall institute any legal proceedings, including an action for injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division IV, part 8, or to obtain compliance with the provisions of said part or the rules or orders issued thereunder. Iowa Code § 455B.477(3).

**FACTS**

18. Country Stores owns and operates several retail gasoline stations throughout Iowa. On November 15, 2000, the DNR director issued Administrative Order 2000-UT-09 to Country Stores for UST violations at its retail gasoline station located in Bode, Iowa, including failure to provide the DNR with requested UST records. The Order imposed an administrative penalty of \$4,700.00. Country Stores did not appeal the order, and it became a final agency action.

19. In April 2006, Country Stores registered with the DNR as the owner of one 6,000-gallon, and two 12,000-gallon petroleum USTs at the Le Mars Country Store (UST # 8602051), located at 436 Plymouth Street SW, Le Mars, Iowa.

20. During an October 20, 2006 inspection of the Le Mars Country Store conducted by DNR Environmental Specialist Tom Roos, Mr. Roos discovered the automatic tank gauges on the

USTs were not operating, and Country Stores failed to maintain on-site release detection records and test results.

21. On October 25, 2006, Mr. Roos sent a letter to Country Stores requesting the last three months of tank release detection, last annual line tightness test, and documentation that the line leak detectors had been tested. The letter requested that the documentation be sent to within 2-days.

22. On November 20, 2006, the DNR sent a Notice of Violation letter to Country Stores for failure to submit requested UST documentation. The letter required Country Stores to submit all requested documentation by December 1, 2006.

23. On December 1, 2006, Country Stores faxed to the DNR the results of a line leak detector test conducted on December 5, 2005; however, no other required documentation was submitted.

24. On December 4, 2006, Country Stores faxed to the DNR the results of line leak detector and line tightness tests conducted on December 4, 2006. The documents submitted showed that the mechanical line leak detector on the regular unleaded line failed the test, and was replaced.

25. On December 22, 2006, the DNR sent a Notice of Violation letter to Country Stores for failure to submit documentation of monthly release detection records for the USTs.

26. On December 26, 2006, Country Stores faxed to the DNR UST monthly release detection documentation (statistical inventory reconciliation ("SIR") reports) for August, September, and October 2006.

27. On January 5, 2007, Mr. Roos contacted Tank Management Services, Inc. (Country Store's SIR provider) to determine the date Country Stores submitted UST inventory records to it for analysis. Tank Management Services stated that Country Stores submitted eight months of

inventory records during the first week of December 2006. Tank Management Services completed its analysis of the inventory data on December 13, 2006 and December 14, 2006.

### VIOLATIONS

28. Country Stores failed to perform an annual product line tightness test, or use an alternative method of monthly monitoring that is designed to detect a release from any portion of the underground piping in violation of 567 Iowa Admin. Code 135.5(2)"b"(1)"2".

29. The automatic tank gauge system for the USTs was not operating in violation of 567 Iowa Admin. Code 135.5(1)"a"(1)-(2) and 135.5(4)"d"(1).

30. Country Stores did not conduct UST leak detection monitoring every thirty days with a DNR-approved method such as automatic tank gauging, or by monthly product inventory control methods and tank tightness testing, for detection of petroleum releases in violation of 567 Iowa Admin. Code 135.5(2)"a".

31. Country Stores failed to maintain monthly UST leak detection records at the UST site, or at a readily available alternative site, in violation of 567 Iowa Admin. Code 135.4(5)"b"(4), 135.4(5)"c"(1)-(2), and 135.5(6).

WHEREFORE, Plaintiff State of Iowa ex rel., Iowa Department of Natural Resources requests the Court:

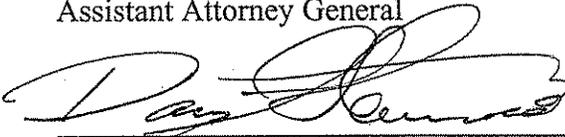
- a. assess a civil penalty against Country Stores pursuant to Iowa Code section 455B.477(1) (2007) for each day of violation of 567 Iowa Admin. Code 135.4(5)"b"(4), 135.4(5)"c"(1)-(2), 135.5(1)"a"(1)-(2), 135.5(2)"a", 135.5(2)"b"(1)"2", 135.5(4)"d"(1) and 135.5(6) not to exceed five thousand dollars (\$5,000) per day, per violation, for as long as the violation continues; and
- b. issue an order permanently enjoining Country Stores from any further violation of 567 Iowa Admin. Code 135.4(5)"b"(4), 135.4(5)"c"(1)-(2), 135.5(1)"a"(1)-(2), 135.5(2)"a", 135.5(2)"b"(1)"2", 135.5(4)"d"(1) and 135.5(6).

Plaintiff further requests such other relief the Court may deem just and proper and that the Court tax the costs of this action to Country Stores.

Respectfully submitted,

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